

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LARTHA STARKS,

Plaintiff,

v.

REPORT AND RECOMMENDATION

MAXIMUS HEALTH SERVICES, INC.
et al,

19-CV-6805-CJS-MJP

Defendant.

Pedersen, M.J. On February 17, 2021, the undersigned issued an Order to Show Cause directing Plaintiff to show cause as to why this case should not be dismissed pursuant to Western District of New York Local Rule of Civil Procedure 41(b). (ECF No 37.) The deadline to file a response was March 19, 2021. As there has been no response, the undersigned recommends that the case be dismissed for failure to prosecute.

BACKGROUND

By Text Order entered on January 14, 2020, the Honorable Michael A. Telesca referred this case to the undersigned pursuant to 28 U.S.C. § 636 for non-dispositive matters. On October 18, 2020, the Court held a settlement conference (Min. Entry, ECF No. 31). The parties did not settle the case at the conference but wrote to the Court on November 2, 2020, the following: “parties write jointly to advise the Court that they have resolved this matter in principle. The parties jointly request that the Court adjourn all deadlines sine die and allow the parties 30 days, until December 2,

2020, to file a stipulation of dismissal with prejudice once settlement has been consummated.” (“So Ordered” Letter Req., ECF No. 32.) After the Court granted two extensions of the December 2, 2020, deadline, the parties have ceased communication with the Court. The Court extended the deadline to file the stipulation to February 15, 2021. The Court has had no contact with the parties since January 15, 2021. (Second Mot. for Extension of Time, ECF No 35).

On February 17, 2021, the Court issued an Order to Show Cause (ECF No. 37) to Plaintiff directing her to show cause as to why this case should not be dismissed pursuant to Western District of New York Local Rule of Civil Procedure 41(b). To date, Plaintiff has failed to respond. Consequently, the undersigned recommends that the case be dismissed for failure to prosecute.

Accordingly, the Court hereby:

RECOMMENDS that the matter filed under Civil Action Number 19-CV-6805-CJS-MJP be dismissed with prejudice, and the Court further

RECOMMENDS that this matter should be deemed closed.

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within fourteen (14) days after receipt of a copy of this Report and Recommendation in accordance with the above statute, Fed. R. Civ. P. 72(b), 6(a) and 6(e) and Local Rule 72.

The district court will ordinarily refuse to consider on de novo review arguments, case law and/or evidentiary material which could have been, but was not,

presented to the magistrate judge in the first instance. *See, e.g., Paterson-Leitch Co., Inc. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988).


Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989); *Wesolek v. Canadair Ltd.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 72(b) of the Local Rules for the Western District of New York, “[w]ritten objections . . . shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority.” **Failure to comply with the provisions of Rule 72(b), or with the similar provisions of Rule 72(a) (concerning objections to a Magistrate Judge's Decision and Order), may result in the District Court's refusal to consider the objection.**

Let the Clerk send a copy of this Order and a copy of the Report and Recommendation to the attorneys for the Plaintiff and the Defendant.

IT IS SO ORDERED.

Dated: March 24, 2021
Rochester, New York


MARK W. PEDERSEN
United States Magistrate Judge